

1 JAMES DAIRE (S.B.N. 239637)
2 REED LYON (S.B.N. 288361)
3 YELP INC.
4 350 Mission St. 10th Floor
5 San Francisco, CA 94105
6 Telephone: (415) 908-3801
7 Facsimile: (415) 615-0809
8 Email: jdaire@yelp.com
9 Email: reedlyon@yelp.com

10 Attorneys for Plaintiff
11 YELP INC.

12 ANTON “TONY” N. HANDAL (S.B.N. 113812)
13 JENIFER C. WALLIS (S.B.N. 303343)
14 MUNCK WILSON MANDALA, LLP
15 1925 Century Park East, Suite 2300
16 Los Angeles, California 90067
17 Telephone: (310) 855-3311
18 Facsimile: (972) 628-3616
19 Email: thandal@munckwilson.com
20 Email: jwallis@munckwilson.com

21 Attorneys for Defendant
22 REVIEWVIO INC. d/b/a DANDY

23 IN THE UNITED STATES DISTRICT COURT
24
25 THE NORTHERN DISTRICT OF CALIFORNIA

26 YELP INC., a Delaware corporation,

27 Plaintiff,

28 v.

REVIEWVIO INC., d/b/a DANDY,

Defendant.

Case No. 23-cv-06508-WHA

**UPDATED JOINT CASE
MANAGEMENT STATEMENT AND
[PROPOSED] ORDER**

Date: May 23, 2024
Time: 8:00am
Dept.: Courtroom 12

Action Filed: December 18, 2023

1
 2 Plaintiff Yelp Inc. (“Yelp”) and Defendant ReviewVio Inc., d/b/a/ Dandy (“ReviewVio”),
 3 have met and conferred and jointly submit this Updated Joint Case Management Statement &
 4 Proposed Order pursuant to the Court’s February 16, 2024 Order (ECF No. 18), the Clerk’s Notice
 5 Rescheduling the Initial Case Management Conference (ECF No. 28), the Standing Order for All
 6 Judges of the Northern District of California – Contents of Joint Case Management Statement, and
 7 Civil Local Rule 16-9 in advance of the Initial Case Management Conference scheduled for May
 8 23, 2024.

9 **1. JURISDICTION & SERVICE**

10 This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
 11 1338(a), and 15 U.S.C. § 1121, because Yelp’s claims arise under the Lanham Act, 15 U.S.C. §
 12 1051, et seq. This Court has supplemental jurisdiction over Yelp’s state and common law claims
 13 pursuant to 28 U.S.C. §§ 1338(b) and 1337 because they are so related to Yelp’s claims under
 14 federal law that they form part of the same case or controversy and derive from a common nucleus
 15 of operative facts. This Court has personal jurisdiction over ReviewVio because it is a business
 16 entity that resides in California, does sufficient business and/or has sufficient minimum contacts
 17 in California, or otherwise intentionally avails itself of the California market so as to render the
 18 exercise of jurisdiction over it consistent with traditional notions of fair play and substantial justice.

19 No issues exist regarding personal jurisdiction or venue, and all parties have been served.

20 **2. FACTS**

21 The parties separately describe their respective positions on the facts.

22 **a. Plaintiff’s Position**

23 Yelp operates a popular website, mobile site, and related mobile applications (collectively,
 24 the “Yelp Service”) that allow members of the public to, among other things, read and write
 25 reviews of local businesses, government agencies, and other local establishments. Consumer trust
 26 is a top priority and Yelp takes significant measures to maintain the integrity and quality of the
 27 content on Yelp, while working to level the playing field for all businesses.

28

1 ReviewVio engages in suppression of Yelp reviews by offering “review gating” products
 2 or services, through which consumers with positive feedback are invited to write a public review
 3 of their experience with a particular business, while criticisms are diverted from publication.
 4 Review gating misleads consumers, who may remain unaware when viewing a profile of a
 5 particular business that review gating has been employed to suppress critical reviews. ReviewVio
 6 holds itself and Dandy out as “reputation management” companies who falsely claim to be able,
 7 for a fee, to remove “bad reviews” and “negative reviews” from Yelp (as well as from other internet
 8 platforms).

9 Yelp demanded that ReviewVio stop promoting, advertising, and/or offering any services
 10 relating to Yelp and stop its false and misleading representations regarding Yelp. Todd Bell of
 11 ReviewVio responded that ReviewVio would comply, without equivocation. A little over a year
 12 later, ReviewVio started doing business as Dandy and (to the extent it ever stopped) resumed its
 13 review gating, mass reporting, and false representations about its ability to take down Yelp reviews
 14 and its “integration” with Yelp.

15 Yelp contacted ReviewVio again. This time ReviewVio represented that it would, among
 16 other things, remove Yelp’s federally registered, famous trademarks from ReviewVio’s websites
 17 and stop making false representations about ReviewVio’s relationship to and ability to influence
 18 or control Yelp. But nothing changed, and nine months later Yelp filed this lawsuit. The principal
 19 factual issues are: (1) the extent to which ReviewVio review gates in connection with Yelp; (2)
 20 the extent to which ReviewVio makes its specified misrepresentations and false affiliation claims
 21 about Yelp; and (3) the amount of ReviewVio’s profits from its Yelp-related conduct.

22 **b. Defendant’s Position**

23 ReviewVio has not engaged in any activities that would give rise to liability as to Yelp.
 24 ReviewVio believes that the claims brought by Yelp against it will be properly dismissed.

25 **3. LEGAL ISSUES**

26 The parties separately describe their respective positions on the legal issues in dispute.

27 **a. Plaintiff’s Position**

1 The primary legal issue is the appropriate remedies for ReviewVio's conduct, which should
 2 not be subject to legitimate dispute.

3 **b. Defendant's Position**

4 ReviewVio is not liable to Yelp. ReviewVio believes that Plaintiff's Amended Complaint,
 5 and all claims against it, should be dismissed. Should Plaintiff's claims survive ReviewVio's
 6 dispositive motion, ReviewVio will answer and assert affirmative defenses, in due course.

7 **4. MOTIONS**

8 On April 8, 2024, ReviewVio filed a motion to dismiss Yelp's First Amended Complaint
 9 pursuant to Fed. R. Civ. Proc. 9(B) and 12(B)(6) (ECF No. 33) and a motion to strike portions of
 10 Yelp's First Amended Complaint (ECF No. 34). Yelp filed oppositions to each (respectively, ECF
 11 Nos. 36 and 37) and ReviewVio filed replies (respectively, ECF Nos. 38 and 39). The motions are
 12 currently set for hearing on May 23, 2024.

13 The parties may bring additional motions as developments warrant, including motions for
 14 summary judgment.

15 **5. AMENDMENT OF PLEADINGS**

16 The parties propose **September 30, 2024** as the deadline for amending the pleadings.

17 **6. EVIDENCE PRESERVATION**

18 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
 19 Stored Information ("ESI Guidelines") and met and conferred pursuant to Federal Rule of Civil
 20 Procedure 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant
 21 to the issues reasonably evident in this action. The parties will continue to meet and confer on
 22 potential ESI issues as necessary. Each party represents that it has instituted reasonable document
 23 retention procedures to maintain relevant documents, electronic or otherwise, until this dispute is
 24 resolved.

25 **7. DISCLOSURES**

26 The parties have exchanged initial disclosures.

27 **8. DISCOVERY**

1 A. Rule 26(a) initial disclosures: The parties do not request any changes to the form or
2 requirement for initial disclosures under Rule 26(a).

3 B. Scope of anticipated discovery:

4 Without waiving its right to take all other appropriate discovery with Rule 26, Yelp has
5 propounded requests for production, requests for admission, and interrogatories and intends to seek
6 discovery on at least the following topics:

- 7 • ReviewVio's Yelp-related representations and sales, including the channels in
8 which it told that public that it "integrates with Yelp"; has the ability to remove
9 critical reviews from Yelp, and offered or sold its review gating service for use
10 with the Yelp platform.
- 11 • Likely or actual consumer confusion regarding ReviewVio's Yelp-related
12 services;
- 13 • How long ReviewVio has offered Yelp-related products and services and been
14 engaged in its Yelp-related conduct; and
- 15 • ReviewVio's profits.

16 Without waiving its right to take all other appropriate discovery with Rule 26, ReviewVio
17 intends to seek discovery on at least the following topics:

- 18 • Yelp's claims
- 19 • Yelp's alleged damages
- 20 • ReviewVio's affirmative defenses, to be asserted should its dispositive motions
21 not prevail.

22 As set forth in the proposed case schedule below, the parties propose May 16, 2025, as the
23 deadline to complete discovery. The Court's ruling on the Motion to Dismiss may impact the
24 parties' views on whether discovery should be conducted in phases or focused on particular issues.
25 The parties agree to meet and confer following the Court's ruling on the anticipated motion to
26 discuss whether phasing or other limitations would be appropriate.

1 C. Electronically stored information: The parties have met and conferred regarding the ESI
 2 Guidelines. Should one become necessary, the parties will enter into a stipulated e-discovery order
 3 consistent with the Court's Model Stipulated Order Re: Discovery of Electronically Stored Info.

4 D. Privilege issues: The parties may assert the attorney-client privilege, attorney work product
 5 doctrine, and/or other privileges, as applicable. The parties agree that attorney-client privileged
 6 communications between the parties and their counsel in this action that (1) concern this action
 7 and (2) were generated after ReviewVio's acceptance of service of the original Complaint by
 8 counsel need not be listed on a privilege log. If either party claims that it inadvertently disclosed
 9 privileged or work product materials or information, the parties will follow the procedure set forth
 10 in Federal Rule of Civil Procedure 26(b)(5)(B).

11 E. Discovery limitations: The parties do not anticipate a need to change the discovery
 12 limitations or impose additional discovery limitations at this time.

13 F. Other orders: The parties are submitting a stipulated protective order based on the model
 14 order for highly sensitive confidential information and/or trade secrets to govern the production,
 15 disclosure, and treatment of confidential material and information produced or provided in
 16 discovery. The parties have not identified any discovery disputes that require the Court's attention
 17 at this time.

18 **9. CLASS ACTIONS**

19 This case is not a class action.

20 **10. RELATED CASES**

21 There are no related cases.

22 **11. RELIEF**

23 Yelp seeks the following relief: (1) a finding that ReviewVio engaged in unfair
 24 competition, infringement, and dilution through its use of the YELP marks (as that term is defined
 25 in paragraph 39 of the First Amended Complaint); (2) a finding that ReviewVio's trademark
 26 infringement was knowing and willful and committed with bad faith and intent to deceive and that
 27 this case is exceptional under 15 U.S.C. § 1117(a); (3) a finding that ReviewVio engaged in unfair
 28 competition and false advertising and breached Yelp's Terms of Service by engaging in the

1 unlawful conduct described above; (4) that the Court enter an order enjoining and restraining
 2 ReviewVio and all persons or entities acting as agents of or in concert with ReviewVio, during the
 3 pendency of this action and thereafter, from: (a) infringing or diluting the YELP marks in any way,
 4 including but not limited to through or on ReviewVio's websites and sales and marketing
 5 collateral; (b) accessing or attempting to access the Yelp Service and/or any Yelp computer
 6 systems or information on the Yelp Service or any Yelp computer systems; (c) initiating, sending,
 7 or procuring the initiation or sending of any unsolicited commercial message to Yelp or any Yelp
 8 user regarding ReviewVio's business practices described above; (d) engaging in activity that
 9 violates Yelp's Terms of Service; including but not limited to (i) offering Yelp review suppression
 10 products or services, (ii) promoting businesses or commercial ventures in connection with the Yelp
 11 Service, (iii) sending unsolicited commercial messages to Yelp users, and (iv) recording,
 12 processing, or mining any information about Yelp users; (5) that Yelp be awarded actual damages
 13 and ReviewVio's profits; (6) that Yelp be awarded statutory damages and/or penalties; (7) that
 14 Yelp be awarded its reasonable attorney's fees and costs, as well as prejudgment interest to the
 15 extent available under the law; (8) that Yelp be awarded treble and punitive damages; and (9) that
 16 Yelp be granted such other and further relief as the court deems just and proper.

17 Should its Motion to Dismiss fail, ReviewVio reserves the right to bring any affirmative
 18 defenses or counterclaims it may have.

19 **12. SETTLEMENT AND ADR**

20 The parties have met and conferred regarding ADR processes, filed ADR certifications
 21 (ECF Nos. 26 and 27), and believe that ADR is premature at this time but are willing to agree to
 22 private mediation after the pleadings are settled.

23 **13. OTHER REFERENCES**

24 The parties agree that this case is not suitable for reference to binding arbitration, a special
 25 master, or the Judicial Panel on Multidistrict Litigation.

26 **14. NARROWING OF ISSUES**

27 The parties agree that the Court's ruling on the anticipated Motion to Dismiss may impact
 28 the parties' views on whether it may be possible to narrow the issues of the case by agreement or

1 motion, and are willing to continue meeting and conferring regarding whether and how such a
 2 narrowing may be possible.

3 **15. SCHEDULING**

4 The parties jointly propose the following case schedule:

5 Deadline	6 Proposed Date
7 Initial expert disclosures	March 21, 2025
8 Rebuttal expert disclosures	April 28 , 2025
9 Discovery cutoff	May 16, 2025
10 <i>Daubert</i> and dispositive motion cutoff	June 5, 2025
11 <i>Daubert</i> and dispositive motion hearings	July 17, 2025
12 Pretrial conference	October 18, 2025
Trial	November 17, 2025

14 **16. TRIAL**

15 The parties agree that this case cannot be handled under the Expedited Trial Procedure.
 16 Yelp has demanded a jury trial, but both parties are open to stipulating to a bench trial if the parties
 17 can reach agreement as to certain facts. If tried to a jury, the parties expect trial will take
 18 approximately 3-5 days.

19 **17. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

20 Each party has filed the Certification of Interested Entities or Persons required by Civil
 21 Local Rule 3-15.

22 Yelp's Certification of Interested Entities or Persons (Dkt. 2) states that there is no conflict
 23 to report and the following listed persons, associations of persons, firms, partnerships,
 24 corporations, or other entities (i) have a financial interest in the subject matter in controversy or in
 25 a party to the proceeding, or (ii) have a nonfinancial interest in that subject matter or in a party that
 26 could be substantially affected by the outcome of this proceeding: (1) BlackRock, Inc. and (2) The
 27 Vanguard Group, Inc.

1 ReviewVio's Certification of Interested Entities or Persons (Dkt. 17) states that there is
2 no conflict of interest (other than the named parties) to report.

18. PROFESSIONAL CONDUCT

4 All attorneys of record for both parties have reviewed the Guidelines for Professional
5 Conduct for the Northern District of California.

19. Other

7 || N/A.

DATED: May 7, 2024

Respectfully submitted,

By: /s/ James Daire*
James Daire

Attorneys for Plaintiff
Yelp Inc.

DATED: May 7, 2024

Respectfully submitted,

16 Munck Wilson Mandala, LLP

Attorneys for Defendant
ReviewVio Inc. d/b/a Dandy

* The filer of this document, James Daire, certifies under N.D. Cal. Civil L.R. 5-1(i)(3) that he has obtained authorization from the above signatories to file the above-referenced document and that they have concurred in the filing's content.

1 **CASE MANAGEMENT ORDER**
2

3 The above UPDATED JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER
4 is approved as the Case Management Order for this case and all parties shall comply with its
5 provisions. [In addition, the Court makes the further orders stated below:]
6

7 **IT IS SO ORDERED.**
8

9 **DATED:**_____

10
11 _____
12 **Hon. William Alsup**
13 **UNITED STATES DISTRICT JUDGE**
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28